

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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F.I.M., et al.,

Plaintiff,

Case No. 3:14-cv-00630-MMD-WGC

ORDER

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, et al.,

Defendants.

I. SUMMARY

Before the Court is Defendants' Motion for Stay Pending Resolution of Venue ("Motion"). (Dkt. no. 34.) Defendants requested expedited review and the Court imposed a shortened briefing schedule. (Dkt. no. 35.) Plaintiffs filed a timely response and Defendants filed their reply. (Dkt. nos. 39, 40.) For the reasons discussed below, Defendants' Motion is granted.

II. BACKGROUND

Plaintiffs challenge Defendants' decision to settle two private lawsuits ("Settlements"), alleging that the Settlements resulted in unlawful modifications of U.S. Fish & Wildlife Service's ("FWS") statutory obligations under the Endangered Species Act ("ESA"). (Dkt. no. 18.) Those allegedly impermissible alterations include Defendants' failure to follow procedural requirements for classifying a candidate species and Defendants' imposition of arbitrary listing determination deadlines. (*Id.*) The two lawsuits underlying the Settlements were part of twelve actions against FWS that were

1 consolidated into a multidistrict litigation in the U.S. District Court for the District of
2 Columbia (“the MDL Court”). (*Id.* ¶ 55.) Plaintiffs allege that the unlawful effects of
3 FWS’s Settlements are particularly important to two species in Nevada that are
4 identified as candidate species and covered by the Settlements — the Greater Sage
5 Grouse and the Bi-State Distinct Segment of the Greater Sage Grouse. (*Id.* ¶ 8.)
6 Plaintiffs’ initial Complaint asserts six claims under the ESA, the Administrative
7 Procedure Act (“APA”) and the United States Constitution. (Dkt. no. 1 at 36-47.)
8 Plaintiffs later amended their Complaint to add a seventh count for equitable estoppel.
9 (Dkt. no. 18 at 48-50.) Among other relief, Plaintiffs seek a declaration that FWS has
10 violated the ESA and the APA by entering into the Settlements.

11 Plaintiffs filed the Complaint on December 4, 2014. (Dkt. no. 1.) In response,
12 Defendants moved to transfer venue to the MDL Court. (Dkt. no. 15.) On February 6,
13 2015, the Clerk of the United States Judicial Panel on Multidistrict Litigation (“the
14 Panel”) issued a conditional transfer order (“CTO”) transferring this case to the MDL
15 Court. (Dkt. no. 19-1.) Plaintiffs have opposed transfer and have moved to vacate the
16 CTO (“Plaintiffs’ Motion”). (Dkt. nos. 21, 25.) The Panel recently issued a Notice of
17 Hearing Session, identifying Plaintiff’s Motion on the list of matters designated for
18 consideration without oral argument at its next scheduled session on May 28, 2015.
19 (Dkt. no. 30-1 at 12.)

20 Defendants seek a temporary stay of all non-transfer-related proceedings
21 pending the Panel’s resolution of Plaintiffs’ Motion or the Court’s disposition of
22 Defendants’ Motion to Transfer Venue (dkt. no. 15). In opposing Defendants’ Motion,
23 Plaintiffs contend that they are not demanding the immediate filing of the administrative
24 record or briefing on claims relating to the Settlements that are relevant in an Oklahoma
25 case that has been transferred to the MDL Court. Rather, Plaintiffs ask the Court to
26 resolve the parties’ immediate discovery dispute regarding Plaintiffs’ estoppel claim.

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1 **III. DISCUSSION**

2 A district court has discretionary power to stay proceedings in its own court.
3 *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); see also *Lockyer v. Mirant Corp.*,
4 398 F.3d 1098, 1109 (9th Cir. 2005). “A trial court may, with propriety, find it is efficient
5 for its own docket and the fairest course for the parties to enter a stay of an action
6 before it, pending resolution of independent proceedings which bear upon the case.”
7 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). “When
8 considering a motion to stay, the district court should consider three factors: (1)
9 potential prejudice to the non-moving party; (2) hardship and inequity to the moving
10 party if the action is not stayed; and (3) the judicial resources that would be saved by
11 avoiding duplicative litigation if the cases are in fact consolidated.” *Pate v. Depuy*
12 *Orthopaedics, Inc.*, No. 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at *2 (D. Nev.
13 Aug. 14, 2012) (quoting *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal.
14 1997)) (internal quotation marks omitted).

15 These three factors weigh in favor of a brief temporary stay. A temporary stay
16 would promote judicial economy and avoid duplicative litigation, particularly given the
17 preliminary determination by the Panel that this case “involve[s] questions of fact that
18 are common to the actions previously transferred” to the MDL Court. (Dkt. no. 19-1 at
19 2.) A stay would also avoid potential duplicative rulings on the parties’ anticipated
20 discovery disputes.

21 Plaintiffs argue that there are compelling reasons to permit immediate discovery
22 on their estoppel claim, which, they allege, is unique to this case and has not been
23 previously raised. One of the reasons involves a 95-year-old witness who is a resident
24 of Nevada, and who has expertise and information pertinent to Plaintiffs’ estoppel claim.
25 The age of a significant witness is a compelling reason for the parties to conduct
26 discovery to capture the witness’s testimony, and, in turn, to utilize the witness’s
27 knowledge to advance discovery. But the duration of Defendants’ requested stay is
28 brief. The Panel has scheduled Plaintiff’s Motion for consideration at its meeting on May

1 28, 2015, which is approximately three weeks from now. Any potential prejudice to
2 Plaintiffs from the stay and commensurate delay in discovery would be minimal in light
3 of the stay's short duration.

4 The Court therefore grants Defendants' Motion. All non-transfer-related
5 proceedings are temporarily stayed pending a decision by the Panel on Plaintiffs'
6 Motion. Plaintiffs may seek reconsideration in the event the Panel does not issue a
7 decision on Plaintiffs' Motion by June 5, 2015.

8 **IV. CONCLUSION**

9 The Court notes that the parties made several arguments and cited to several
10 cases not discussed above. The Court has reviewed these arguments and cases and
11 determines that they do not warrant discussion as they do not affect the outcome of the
12 Motion.

13 It is therefore ordered that Defendants' Motion for Stay Pending Resolution of
14 Venue (dkt. no. 34) is granted. All non-transfer-related proceedings are temporarily
15 stayed pending a decision by the Panel on Plaintiffs' Motion. Plaintiffs may seek
16 reconsideration in the event the Panel does not issue a decision on Plaintiffs' Motion by
17 June 5, 2015.

18 DATED THIS 7th day of May 2015.



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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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